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NEW VALUES IN LEGAL EDUCATION

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The lawyer is not an heroic figure in the public eye. This is natural enough, for on the comparatively infrequent occasions when the limelight of public attention is turned upon him, it usually shows him in an attitude not greatly to be admired. He is defending some person charged with a crime so heinous as to catch the public notice, he is supporting the claim of some unpopular corporation that is deemed opposed to the public interest, or instituting proceedings to collect an exorbitant fee from the estate of a dead man, a bankrupt or a corporation under receivership. The personal contacts of that curious person of small affairs pictured in the cartoons as "The Average Man," with the lawyer are too apt to be with bill collectors and ambulance chasers, those petti-foggers and shysters that cling to the body of the profession like the soiled fringe of a worthy garment.

Unhappily the serious work of the legal profession in its ceaseless task of maintaining order, in patient unloosing of the innumerable tangles in which the affairs of a forceful and restless people are constantly being thrown, or in preventing or adjusting conflicting business conditions, in working out plans for the reorganization of commercial and industrial methods, and in reforming and readjusting those rules of social coöperation which we call "the law" so that they may be suited to the ever changing social and economic conditions with which we are confronted—these activities at the bar and on the bench are wholly unknown to the public at large. Not only are they unknown, but they are in effect unknowable. The worthy achievements of the lawyer, with such rare exceptions as Patrick Henry's speech before the parsons, are neither dramatic nor obvious, while the powerful swatting of the Home Run King, or the clever pranks of a child movie actor, are both dramatic and obvious. Hence our "average man" is well acquainted with Babe Ruth and Jackie Coogan, but has no knowledge as to who are members of the Supreme Court of the United States or of the state in which he lives, or as to the real significance of those tribunals. Thus we see that the generally unfavorable attitude of the public toward the legal profession as an unknown body of men is not only natural but justifi-

able under the facts as they are known to the public. But the picture is not complete unless we set over against the public's attitude towards lawyers in general its regard for individual lawyers in particular. In choosing those to whom authority and power shall be entrusted, whether in public or private affairs, the public usually selects lawyers, thinking of them, however, as outstanding citizens fit to be trusted, rather than as lawyers. We pause here to make, parenthetically, the obvious comment that the lawyer who is not a citizen first and a lawyer afterwards is a mistake, and the public well enough knows it.

Bearing these facts in mind, we should expect to find that legal education makes no very strong appeal to the public. Having little admiration for lawyers in general, our average man has little interest in schools that train lawyers. That attitude is natural enough. Is it also permanent and necessary? That depends upon the character of the legal training afforded by the schools, the ideals and objectives that determine their development. I think a new epoch in legal education is already begun.

In explaining what this new epoch means, and what are its objectives and ideals, we must first consider the lawyer and his ways. Adapting the quaint conceit of the seventeenth century grammarians, we will consider first the lawyer his trade, second the lawyer his profession, and third the lawyer his vocation.

Let us define our terms, trade, profession, vocation. The tradesman prosecutes his trade for his own advantage. He endeavors to buy at a low price and sell at a high price so that the profit of the transaction may be with him, and not the other party. Such skill as he may acquire he turns to his own profit rather than to the service of his community. But the professional man holds himself out—professes—to be ready to render to the public service of a kind requiring very peculiar training and skill, such as is possible only to one possessed of unusual learning and marked intellectual powers. Originally the professional man, whether serving as an advocate in the courts or as physician to the sick, rendered his skilled service without agreement for compensation. He may have looked forward to the present,—or fee—which his grateful client or patient would probably give him, but he had no right to demand it. To the professional man the main consideration was the service rendered to his client, and through his client to the public. His personal reward was merely an incident. In thus serving the public through his client

he should not engage in any practices that would be injurious to the public. Hence the concept of professional ethics. The member of a profession guilty of unprofessional conduct, and unworthy of the public confidence, must be expelled.

Yet others are distressed to see the sorrows and misfortunes of their fellows. They see a vision of a happier world, the glory of a brighter day. Forgetful of self, without thought of reward, they feel called to devote their talents and their lives to the service of their fellowmen. The most obvious vocation is that of the teacher of religion in foreign lands, the missionary, but there are many others in the land in which self sacrifice is scarcely less real, even though it be less obvious.

Among the lawyers of our day there are many—far too many—to whom the law is but a trade. There are many to whom it is a profession as well. There are some—indeed a goodly company—to whom it also extends a call to unselfish and unrewarded service to the public; and we are glad to note that the number of lawyers to whom the law is a vocation as well as a profession, always considerable, is very materially increasing in our time.

There are many of the attorney's activities that do not rise above the level of a trade. The drawing of the papers involved in the ordinary small transaction, the writing of simple wills, the filing and releasing of liens, the collection of bills, much of the practice in petty courts, even the drawing of pleadings taken from the form book, these and hundreds of other details in the work of the attorney require no learning, very little skill, and very limited knowledge. Uriah Heep or any other of the graduates of Mr. Tidd's school of practice, could perform these services as well as Lord Eldon or Rufus Choate. Indeed the bar of almost any considerable community can show one or more uncultured and ignorant men whose native shrewdness and unscrupulous methods have built up a large trade in the mechanics of the law which bring to them much gain, to the public much loss and to the legal profession a sadly damaged reputation. It should be added, however, that many of these tradesmen in the law honorably perform useful functions in a community, comparable to those of a notary in continental Europe. I have even known such lawyers who had no understanding whatever of the law as a science, whose lack of culture was so marked as to make them uncouth, but who possessed such sterling character, such right hearts and such good sense as to make them benefactors of their communities.

But the trade lawyer, even though he be not a shyster or ambulance chaser, is seldom a public asset. He is usually a distinct liability. If the schools were to train only such lawyers—as I am afraid some schools have done—no man could decently ask for them support either from the state or from private benefactors. But the man to whom the law is a profession stands in a different place in the social economy. He renders an indispensable service to society. It is through his ministry at the bar, on the bench, in the legislative halls, that we have throughout this broad land of restless energy and feverish industry the reign of Law, that law of which Bishop Hooker wrote.

"Of law there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world. All things in heaven and earth do her homage,—the very least as feeling her care, the greatest as not exempted from her power; both angels and men and creatures, of what condition soever, though each in different sort and manner, yet all with uniform consent, admiring her as the mother of their peace and joy."

Just as our organized physical world is possible only because of the unseen but all-pervading force of gravitation, without which it would dissolve into a cloud of dust floating aimlessly in ethereal space, so our social order can exist only by reason of the unseen influence of law. Our national life had its beginning when the little company of Pilgrims, three centuries ago, gathered in the narrow cabin of the "Mayflower," drew up and ordained for their government the famous "compact." To those men was given the vision to see that the reign of law is the absolute condition of the existence of society and of the development of civilization itself. The law touches and controls every human relation and without it none of the arts or sciences can advance or even exist. The law protects the child before it is born; unseen it stands guard over the infant in its cradle. It attends every step of the growing child, seeks to surround him with healthful influences, both physical and moral, and provides for his education, and full opportunity to fit himself to take part according to his abilities in the great struggle of life. When he is come to manhood the law assures him equal participation, to the measure of his skill and his strength, in the God-given blessings of fruitful work, protects him from fear and violence so that he may concentrate his strength and his mind on that work, and safeguards him in the enjoyment of the fruits of his labor. It makes a castle of the

home that shelters his wife and children, and finally when life is done stands vigil over his long sleep in the churchyard. Yet throughout his long journey from the cradle to the grave he is, for the most part, if a law-abiding citizen in a well-governed country, as unconscious of the law's protecting care as he is of the ceaseless supporting pressure of the atmosphere. It is only when the law fails to perform its function that the citizen becomes acutely conscious of its existence. If his property is destroyed by rioters, if his life is endangered by robbers, or if other wrongs are inflicted upon him, he calls loudly upon the law for protection and redress. Then it is that the invisible power of the law gives visible evidence of its existence, in hurrying squads of policemen or of soldiers, or perchance in the solemn proceedings in the court room. The external signs of the majesty of the law, those agencies through which it reigns, are manifestly of great importance, just as are the fixed rules of law which determine the activities of such agencies, but they are not to be compared in ultimate significance with the spirit that exists unseen within this visible semblance. This is the meaning of Lord Coke's famous phrase, "Reason is the life of the law." A rule of law is not necessarily good; it may be positively bad. It is just as good or bad as the reason that lies behind it, and that reason is good only so far as it is consistent with the spirit of law. This term, immortalized by Montesquieu's famous treatise on "The Spirit of the Law," has proved too sublimated for American usage. Therefore the concept has been brought to earth, and renamed "social justice." Social justice is what society needs for its proper development, just as the growing child needs a healthful environment. Social justice is what all men desire and seek. But unhappily this search is like the quest of the Holy Grail. The vision of the searchers is obscured by self-interest, and too often that which is discovered and proclaimed as social justice is but such an arrangement as will best promote the interests of the individual or the group that proclaims it. Like the Holy Grail, social justice is to be discovered only by him whose heart is pure, and—one may add,—whose head is clear.

During the half century that is now closing the American law schools have slowly and painfully struggled upward from their insignificant status of trade schools, inadequately teaching rules of thumb as stated in textbooks, and the forms required for this or that, to fairly effective institutions for training men to serve worthily in a noble profession. It is seldom that such a remarkable trans-

formation is so definite in its beginning, or so clearly attributable to the vision and achievement of one man. Modern legal education began in 1870, when C. C. Langdell was made Dean of the Harvard Law School. The appointment itself was revolutionary. To induce the Harvard Board of Overseers to place a young lawyer from New York who had attained no distinction at the bar in the position held by such famous masters of the law as Story, Greenleaf and Parsons, was a task so difficult as to tax the skill and patience of Harvard's young president, Charles W. Eliot. The first action of young Langdell excited first amazement and then ridicule. Instead of telling his students what was the law by lectures, or giving them textbooks where they could find the rules of law as stated by the revered masters, like Coke, Blackstone, Kent, or Story, he put in their hands collections of cases taken from the law reports, and told them to discover the rules for themselves. It is not surprising that this method seemed absurd to lawyers at the bar and even to Langdell's own colleagues. How could untrained boys interpret cases so well as the experienced lawyers and judges who lectured or wrote books? And even if they could, would not the process prove so wasteful of time as to be impossible? But Langdell's students liked the new method, even though they were called "Langdell's Lambs" in derision. Langdell persisted. His new method grew rapidly in popularity. His colleagues began to understand the new idea. Here was the beginning of critical research in dealing with the law in the class room. Then the lawyers at the bar began to note that young men trained under Langdell were more capable assistants. Members of the Boston and New York bar began to seek out the high stand men among the graduating class. Then in 1874 Langdell, with Eliot's support, did another seemingly absurd thing. He brought into the faculty James Barr Ames, a young man just graduated, who had had no experience at the bar, had never been even admitted to practice. The revolutionary character of this action is better appreciated if we recall that at this time most of the law teachers of the country were distinguished lawyers in practice or judges on the bench, who taught the students incidentally what they knew. But Langdell's judgment was sound. Young Ames was a genius. To him, more even than to Langdell, we owe our modern system of legal education. With the aid of Ames, the Harvard Law School grew rapidly in popularity, numbers and influence. By the close of the century the victory was won. With very few exceptions the leading schools of

the country had accepted the so-called case system of instruction. At the present time it may be regarded as fully established. I suppose there are still some schools which adhere to the textbook and the lecture as principal vehicles of instruction, just as there are still some people who prefer a horse-drawn carriage to an automobile. But they too must yield to the inexorable logic of results.

But the so-called case system, which, perhaps, might more aptly be called the system of applying the scientific method of research to the study of law, has produced other results than securing for high stand graduates positions in great law firms at what seem to us older lawyers absurdly high salaries. It has necessitated the development of the professional teacher of law as distinguished from the teaching practitioner or judge of the last century. The teacher who sits before a class of well trained and capable young men who have access not only to the cases in their casebook, but also to the whole body of case law in the school library, including the most recent reports, the textbooks and the law journals, faces quite an ordeal. If he undertakes to lead the discussion of an assigned case without a fairly wide knowledge of the cases and periodical literature relating to the same subject matter, and a well thought out theory on which cases are to be reconciled and distinguished, he courts confusion and defeat inside the class room, and loss of professional reputation outside of it. If he contributes nothing by way of textbooks or magazine articles in the effort to solve the innumerable problems that arise in every course that he teaches, he subjects himself to the danger of being thought to have nothing in him, since nothing comes out. On the otherhand, if he is unwise enough to publish a book or essays that show him lacking in knowledge, in understanding, in scientific method, or in judgment, he merely advertises his unfitness for the position he holds.

The operation of such facts tends to set up a selective process which slowly, but none the less certainly, eliminates from the teaching branch of the profession the stupid, the lazy, the ignorant, and those of unbalanced judgment, and effects the promotion of the abler and more scholarly of those who undertake to teach the law. This condition of affairs requires that successful law teachers shall possess very much the same qualifications that make for success at the bar. But the financial rewards of marked success at the bar are so much greater than those of even the most distinguished success in the class room that it is, in most instances, impossible to draw the

mature man who has achieved distinction in the profession from the bar to the professor's chair. Hence has arisen the saying, now become almost an axiom in law school administration, that "if you wish to secure law teachers of first-rate ability, you must catch them young." This accounts for the practice, now steadily increasing, but still horrifying to many excellent lawyers, and sometimes to the controlling Boards of Universities, of calling as instructors in law young men just graduated in law, who have had no experience in practice whatsoever. Lack of court room experience is unquestionably a serious handicap to a young teacher; but experience has clearly demonstrated that it is safer to experiment with inexperienced ability than experienced mediocrity.

The working together of all these conditions and tendencies has produced many interesting results that have become clearly manifest within the last decade. First, as already indicated, is the development of a new branch of the legal profession, the professional law teachers, who devote their entire time and energy to the work of the class room and its incidents—for the very simple reason that they cannot do less and survive. The part time teacher who quizzes or lectures to a class after a busy day in the office or court room, has served a useful function in his day, but he does not teach in the sense in which that word is now used in the standard law schools of the country. Second is the recognition by the profession, and even by the public, that there have been developed in the teaching branch of the profession some men of exceptional ability. The recent appointment of Dean Stone, of the Columbia University Law Faculty, as Attorney General, and his later elevation to the Federal Supreme Court, have been recognized both by lawyers and laymen as wise and fitting.

When in 1892, at the instance of the American Bar Association, the governments of the several states established the Conference of Commissioners on Uniform State laws, it occurred to no one that the work of drafting the uniform acts to be recommended to the states should be entrusted to the law teachers of the country. Later Professor Williston and Dean Ames were called in, and most of the acts that have gone from this interesting body of public servants to the state legislatures have been drawn by members of the faculties of our leading law schools. When some three years ago the American Institute of Law was formed and endowed for the purpose of undertaking the arduous task of restating in clear and precise terms

the principal topics of our law, its membership was extended to and gladly accepted by nearly a thousand of the most distinguished members of the Bench and Bar of the United States. These men, through their executive council, over which ex-Attorney General Wickersham presides, selected Professor William Draper Lewis, of the University of Pennsylvania, as Director of its activities, and entrusted the preparation of the first draft of the statements now undertaken, to some 26 teachers of law drawn from eleven different universities. It would be tiresome to extend further the statement of the evidence that shows the rapidly growing public recognition of the ability and usefulness of teachers of law.

A third result of putting legal education on the basis of scientific research, naturally follows from the fact that the law faculties now require men of unusual ability. Salaries of law teachers have rapidly been elevated, so as now, on a sort of rough average, to be on the same level as those of the judges of the highest courts of the several states. The salary differential usually obtaining in favor of professors of law naturally arouses the persistent protests of their academic brethren, but economic facts are just as stubborn as facts of other kinds. They cannot be ignored.

A fourth result of the new system is seen in the great crowds of students that now flock into the leading law schools of the country. Not more than a quarter century ago there were many to argue that training for the bar could much better be gotten in the law office than in the law school. Incidentally we may remark that they were quite right in so far as that training was for the law as a trade. At that time the problem was how to induce young men preparing for the bar to attend the law schools. Now the problem in many of our law schools is how fairly and wisely to limit the number admitted so as not to over tax existing facilities. More striking still is the recently adopted program of the American Bar Association to require law school training as a prerequisite for admission to the bar.

A still further consequence of the growing prestige of the law schools is well illustrated in this splendid new building that the State of North Carolina today formally dedicates to the use of the Law Faculty of its great university. Throughout the country facilities provided for the work of the law schools tend to keep pace with the growing efficiency and usefulness of the schools. At the University of Michigan there is now under construction a group of buildings that will provide the most complete and extensive equipment ever

devoted to the uses of legal education at any time or in any place. In other universities plans scarcely less ambitious are being laid.

Are we to conclude, then, from this rather self-gratulatory survey, that the long, hard struggle to establish a scientific and efficient system of legal education has been won at last, and that we may now relax our efforts and rest from our toil? Not at all. Through these struggling years of development, the American Law School has come to its day of greatest opportunity, and, perhaps, of greatest responsibility. As a trade school in the earlier days, teaching the mechanics of the law, droning out so many rules with exceptions, like dead things with holes in them, it was impotent and insignificant, as rightly it should have been. As the later professional school, training students to regard the great body of the law as a living, growing, changing organism, which was soundly administered only when adjusted to the social and economic needs of the people whose conduct is governed by it, the law school has become strong and influential. But in the field where the lawyer is called to render to the public unremunerated service, the law school has as yet done almost nothing. Many distinguished members of the bar, in former generations as well as our own, have responded nobly to the vocation to render the law better suited to the needs of their time. They have served in constitutional conventions, on legislative committees and commissions, taken part in conferences, drafted codes, worked in bar associations, receiving little or no compensation, and no very great public appreciation; but in this work they have received very little aid from the law schools, though occasional contributions by individual professors have already been mentioned.

As recently stated in a public address by former Attorney General Wickersham, "No law school can now remain content with being a mere training school for attorneys." That is a worthy and necessary function, for the institution that trains young men for honorable and efficient service at the bar and on the bench renders a great service to the state. But the law school of the future must go much farther in the field of needed service. The law as we study it in our class rooms is indeed a wonderful system that rightly commands the admiration of all who have the knowledge and intelligence to comprehend it. It may truly be said to have been distilled from the experience of our race through a thousand years. Yet one need not be a lawyer to know that there are many defects and imperfections in this great system which not infrequently work injustice and oppres-

sion, and produce wasteful and irritating delays in legal proceedings, in spite of the best efforts of able and conscientious judges. But one does need to be a lawyer, and a good lawyer, to appreciate the fact that any hasty attempts to repair these defects by legislative action or by ill-considered departure from judicial precedent are apt to introduce still greater confusion, and delay, and do more harm than good. This fact explains the instinctive dislike which the sound lawyer feels for the brash reformer and the ignorant scorner of ancient ways.

The man who would undertake to remodel or even repair our complex system of law, should understand it with a thoroughness such as has come to few men in our time or any other. This understanding should be not merely of the wilderness of ancient laws and modern instances. He must learn to know the vital spirit of the living law. He must know the origin of its rules, and trace the history of their development through the changing centuries. He must see them on the background of social and economic conditions that gave them origin and shaped their changing forms; and above all else he must understand the industrial, economic and social conditions of our own time, so changed as they are by the quickening of the means of transportation, the lightning like speed of communication, the vast growth of the press as a means of disseminating intelligence, and all the diversified wonders of modern scientific achievement. These have produced a new social order, involving a degree of mutual interdependence and necessary coöperation, and conditions of organization and combination in industrial and commercial effort, such as our race has never known before. Yet this steam driven, lightning led, air piercing age must be regulated in its social conduct by a system of law that had its origin and much of its development in pastoral England when 20 miles was a day's journey and to the average Englishman the residents of the next village ten miles distant were as unknown as dwellers across the sea. Naturally such of our rules as are not suited to the needs of our times do not work well, causing confusion, waste, dissatisfaction, sometimes even disorder. The remoulding process must be unceasing. But it is a hazardous process, and must be done with a skilled hand.

To such a broader knowledge and understanding of the law as the regulating instrument of our frenzied civilization, which we call jurisprudence, the law school of the future must contribute its part. It is quite true that our law schools have not as yet the man-power

or the equipment to enter strongly into this vaster and more hazardous field of high endeavor. But the call to the universities of this broad land is clear and compelling. They must find strong men for this task, and develop in them the knowledge and understanding required to accomplish it. These must link arms with their brethren in History, Economics, Political Science and Sociology, and with them move forward to that goal of highest public service to which every university worthy of the name aspires. "The University," says that distinguished lawyer and scholar, Justice Oliver Wendell Holmes, of the Supreme Court of the United States, "is a place from which men start for the Eternal City. In the University are pictured the ideals which abide in the City of God. Many roads lead to that haven, and those who are here have traveled by different paths toward the goal. . . . My way has been by the ocean of the law. On that I have learned a part of the great lesson, the lesson not of law, but of life."

I know that this ancient and honorable seat of learning will not fail to answer the call to this high service.